No. 111 Original

(25)

Supreme Court, U.S.
FILED
JUN 1 1989
JOSEPH F. SPANIOL, JR.
CLERK

In The

Supreme Court of the United States

October Term, 1988

STATE OF DELAWARE,

Plaintiff,

STATE OF TEXAS,

Plaintiff-Intervenor,

STATE OF ARIZONA,

Plaintiff in Intervention,

v.

STATE OF NEW YORK,

Defendant.

REPLY OF STATE OF ARIZONA TO STATE OF NEW YORK'S OPPOSITION TO MOTION TO INTERVENE

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4 pp

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The State of Arizona ("Arizona") hereby replies to the Brief In Opposition to Motions For Leave to Intervene by the State of New York ("New York").

New York begins its opposition by misstating the legal position of Arizona. Arizona relies on *Texas v. New Jersey*, 379 U.S. 674 (1965) and *Pennsylvania v. New York*, 407 U.S. 206 (1972) and does not seek to overrule these

decisions. (Arizona Complaint, paragraphs 9 and 29.) The rule of unclaimed property law set forth in these opinions must be applied to the facts revealed by an examination of the entire securities distribution system. Arizona seeks to take custody of unclaimed intangible personal property when the identity of the owner is unknown to the holder, the distributions were made by the State of Arizona, local governmental entities of Arizona or by corporations incorporated in Arizona, and no claims by the owner has been asserted within the applicable dormancy period.

Arizona is moving for leave to file a complaint in intervention because it claims a right to take custody of a portion of the property which is the subject matter of this action. Arizona has not adopted the Complaint by Texas. Texas may act as lead counsel to enhance the effectiveness of response by the several states acting on their own behalf, but Texas does not represent Arizona. The property claimed by Texas is not the property claimed by Arizona.

The *Texas v. New Jersey* procedural ruling relating to intervention in original jurisdiction actions is also relied on by Arizona. A state is permitted to intervene in an original suit in the Supreme Court between states determining rights to unclaimed property where such state claims a right to a portion of the property involved. Also see *United States v. Louisiana*, 354 U.S. 515, 516 (1957). New York requests that leave to intervene be withheld until New York's motion for judgment on the pleadings is decided. This means that Arizona, a state which claims an interest in the property which is the subject matter of this suit, may never have an opportunity to advocate on its

own behalf. Rule 24(a)(2) of the Federal Rules of Civil Procedure is satisfied in the present situation.

New York does not claim that Arizona's application to intervene is untimely or that it is prejudiced by the intervention of Arizona and other interested states. The just, orderly and effective determination of the legal and factual issues requires that these issues be adjudicated in a proceeding in which all interested states are before the Court. The Motion of The State of Arizona for Leave to File Complaint in Intervention should be granted.

Respectfully submitted,

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June 1, 1989